

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.7070 of 2004

Sadashiv Mhatarba Gurav & ors.	Petitioners
Vs.	
Vasant Shamrao Gurav	Respondent
Mr.Amit Sale for petitioners.	
Mr.P.D.Dalvi for respondent.	

CORAM: B.H.MARLAPALLE,J.

July 31, 2006.

P.C.

. Heard Mr.Amit Sale, the learned counsel for the petitioners who are defendants in Regular Civil Suit No.107 of 2002 and Mr.Dalvi, the learned counsel for the respondent-original plaintiff in the said suit.

. The application at Exhibit 5 filed under Order XXXIX Rules 1 and 2 of the CPC by the plaintiff came to be allowed by the learned Civil Judge, Junior Division at Panhala on 21/10/2003 thereby restraining the defendants temporarily from causing obstruction to the plaintiff's possession over the gram panchayat property no.25 and landed property bearing Gat No.741 till the final decision of the suit. This order came to be challenged in Misc. Civil Appeal No.260 of 2003 by the defendants and the said appeal has been

dismissed by the learned 4th Addl. District Judge at Kolhapur vide his judgment and order dated 19/7/2004. Hence this petition under Article 227 of the Constitution.

. Both the Courts below have recorded concurrent finding that there was a partition of the suit properties and prima facie it was presumed to be effected with respect to all the properties i.e. the residential as well as agricultural land and more so when the plaintiff represented the fourth general and the defendant no.1 represented the third generation with respect to the original holder of the suit property. The 7/12 extracts which were in the name of defendant no.1 have not been taken into consideration by both the Courts below for prima facie consideration and rightly so. The defendant no.1 is the eldest member of the family of one of the branches and, therefore, the partition having taken place about 50 years before could not be doubted at least for prima facie consideration.

. Hence, this petition fails at the threshold and the same is hereby rejected summarily. Regular Civil Suit No.107 of 2002 is directed to be heard and

decided on its own merits as expeditiously as possible and preferably within a period of six months from the receipt of the writ. Writ to go forthwith.

(B.H.MARLAPALLE,J.)